



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SERGEI KAPIRULJA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

09 Civ. 4088 (RO)

ORDER

OWEN, District Judge:

Pro se Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2255 on April 27, 2009, seeking an Order vacating his conviction for one count of conspiracy to commit mail fraud and health care fraud. Petitioner's conviction was imposed on June 29, 2007 by this Court, after a jury trial, for one count of conspiracy to commit mail fraud and health care fraud in violation of Title 18, United States Code, Section 1349. Petitioner was sentenced to 51 months' imprisonment.

On September 14, 2010, Magistrate Judge Pitman issued a Report and Recommendation (the "Report") in which he recommended that the motion be denied in all respects. (Docket Entry No. 12.) On October 14, 2010, Petitioner filed a motion for appointment of counsel and a motion for an extension of time to file objections to the Report. (Docket Entry Nos. 14-15.) By Order on October 27, 2010, this Court denied Petitioner's motion for appointment of counsel and granted Petitioner's extension of time request, providing Petitioner thirty (30) days to file objections. (Docket Entry No. 16.) Petitioner did not file objections to the Report.

United States Magistrate Judges hear dispositive motions and make proposed findings of fact and recommendations, generally in the form of a Report and Recommendation. In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A party may file “specific written objections,” Fed R. Civ. P. 72(b), to a Magistrate Judge’s proposed findings and recommendations, and in that case, the district court has an obligation to make a *de novo* determination as to those portions of the Report and Recommendation to which objections were made. 28 U.S.C. § 636(b)(1); *First Union Mortgage Corp., v. Smith*, 229 F.3d 992, 995 (10th Cir. 2000). Where no timely objection has been made by either party, a district court need only find that “there is no clear error on the face of the record” in order to accept the Report and Recommendation. *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). This standard of review must be applied while remaining cognizant of the court’s obligation to construe a pro se litigant’s submissions liberally in the light that they raise the strongest possible arguments that they suggest. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006)(citations omitted).

As stated above, Petitioner did not file objections to Magistrate Judge Pitman’s Report and Recommendation. Accordingly, this Court has reviewed the Report for clear error on the face of the record. The Report is well-reasoned and adequately supported by law, and this Court agrees with its findings in its entirety. As such, the Report is hereby adopted as the Order of this Court, and the petition is hereby denied.

In addition, a certificate of appealability shall not issue as Petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253. Certification pursuant to 28 U.S.C. § 1915(a)(3) shall not issue, as any appeal from the Report and

Recommendation or from this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

September 24, 2011



RICHARD OWEN
UNITED STATES DISTRICT JUDGE